ARTICLES
OF
REGULATION
Concerning the
SESSION.
WITH
His MAJESTIES
Approbation thereto.

EDINBURGH,
Printed by the Heirs and Succeſſors of *Andrew Anderſon*, Printer to the Kings Moſt Excellent MAJESTY, 1695.

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WILLIAM R.

OUr Soveraign Lord having Considered the following Articles of Regulation, concerning the Session, Approves and Ordains the same to be put to Execution, and to have full force, strength and effect, conform to the late Act of Parliament made thereanent: And Ordains the same, together with this Approbation, both subscribed by His Royal Hand, to be Recorded in the Books of Secret Council and Session, and thereafter Published and Printed, that none pretend ignorance. Given at the Court at Kensingtoun, *the twentieth ninth day of* April, 1695. *and of His Majesties Reign the seventh Year.*

By His Majesties Command
J. JOHNSTOUN.

12/12/38

WILLIAM R.

ARTICLES
OF
Regulation, Concerning the SESSION.

THE Commiſſioners appointed by His Majeſty, with the Advice and Conſent of the Eſtates of Parliament, for Regulation of Judicatories, in diſcharge of the Truſt committed to them, and after long and mature Deliberation, Do in the firſt place, for the effectual preventing and reſtraining of Abuſes, and exorbitant Exactions in the Seſſion, and for the more ſpeedy, eaſie, and ſure Adminiſtration of Juſtice by the Lords thereof, humbly offer to His Majeſties Approbation, the Acts, Orders and Conſtitutions following.

1. That in the extracting of *Acts* or Decreets, whatever Sheets are repeated out of former Acts already extracted, and payed for in the ſame Proceſs, ſhall in the Act or Decreet wherein they are repeated, be only payed for as Copies at the price of eight *Shilling Scots per* ſheet, and no more to be given to the Copier, and that the *quota* of Lines, or quantity of Writing of theſe ſheets, be at leaſt as many lines, and as much writing in each ſheet, as was determined by the former Act of Regulation, and that what ever new ſheets ſhall be added in the poſterior Act, or in the Decreet, ſhall pay each ſheet as an new ſheet, conform to the former Regulation, and that a broken ſheet if any be, be payed foras a whole ſheet.

2. *Item*, For each Bill preſented in the Inner-houſe, there ſhall only be payed for preſenting, fifty eight *Shill. Scots*, and for preſenting the written Anſwers made to the ſame, as much; And that in this manner, *viz.* That the ſaid payments be firſt payed in by the Parties to the Collector aforementioned, and by him marked upon the ſaid Bill, and Anſwers before they be preſented to the Lords.

3. *Item*, That where Bills and Anſwers are inſerted in *Acts* or Decreets, every Bill & everie *Anſwer* be reckoned in order to payment, a ſheet; & that for the ſame ſo reckoned, there ſhall only be payed fourteen *pence Scots* for the Bill, and as much for the Anſwers, though either the Bill or Anſwers may be ſhorter or longer than a ſheet, and that this price thus regulate, for preventing the trouble of Compting, be in the place of the three *pounds Scots* in uſe to be payed for the ſheets of Decreets or Acts, the reſt of the ſheets always paying as above.

4. *Item*, That all the Clerks both of the Inner-houſe and Outer-houſe be put under pay by yearly Sallaries or Fees, and moſt ſtrictly diſcharged of all other takings whatſoever, under the pain of Deprivation, and of the ſum of one years Sallary beſide; And that the Cognition and tryal of their obſervance hereof be by the Lords of Seſſion, at the inſtance of any who ſhall Complain. And farder that in caſe any party in any Proceſs, ſhall think fit to complain of the Clerk for undue taking, the Lords ſhall receive the Complaint ſummarly, and call both the Clerk and Partie or Perſon alledged to have given, and firſt make the ſaid Partie or Perſon declare in writing under

his hand whether he hath given or not; and what he hath given, and then take tryal of the matter by Oath of the Clerk complained upon, or by any other method of Tryal the Lords ſhall think juſt.

5. *Item*, That all the ſaid Clerks give their Oaths at their admiſſion, and renew the ſame again the beginning of every Seſſion, that they ſhal obſerve this Regulation, and that this Oath be conceived in the *Formula* following.

> *I* A. B. *Do by this my great and ſolemn Oath, In the preſence of the Almighty* GOD, *promiſe and ſwear, that in my Office of Clerk, or for the diſcharge thereof in any part, I ſhall not, either by my ſelf, or any other perſon or way whatſoever, take from any Partie or Perſon whatſoever, either Money or good Deed, or Bond, or Promiſe of Money, or good Deed directly or indirectly, in any ſort over and above the yearly Sallary and Fee, allowed to me for my ſaid Office, and that I ſhall content my ſelf with the ſaid Sallarie, and hold my ſelf honeſtly and ſtrictly to the ſame,* So help me GOD.

Item, That the ſaid Sallaries be as follows, *viz.* for the Principal Clerks or the Clerks of the Inner-houſe, to each of them four thouſand *merks Scots*, yearly; and to the under-Clerks, or Clerks of the Outter-houſe to each of them fifteen hundred *merks* yearly, to be payed out of the Dues of their whole Offices by the Collector after-mentioned. But if in any year, the ſaid Dues ſhal happen not to extend ſo far, that then the Dues collected ſhall be divided amongſt them proportionably, the Collectors Fees always included in manner after-mentioned, and with this proviſion, that the preceeding inlakes ſhal be made up, and payed out of the firſt of the excreſs of the ſucceeding years, and the *ſuperplus* of the ſaid Dues, after compleating of the ſaid payments, ſhall be diſpoſed of by the Lords of Seſſion in this manner, *viz.* In the firſt place, for repairing of ſuch of the Clerks who have lately bought their places at dear rates, which are not yet ſufficiently Compenſed, and thereafter for ſuch other Uſes concerning the good of the Colledge of Juſtice, as the ſaids Lords ſhal think fit.

7. *Item*, That Extracters have the allowance of fourteen *pence per* ſheet of all Acts and Decreets, and no more, and that this fourteen *pence* be payed in by the Leidges to the Collector after-mentioned, over and above, and to gether with the three *pounds Scots* to be payed for ilk ſheet as formerly, and that the Collector give the ſaid fourteens back to the ſaids Extracters quarterly, to each of them as they ſhall inſtruct their ſhare and intereſt in the ſame, by their Minut-books, or other ſufficient Documents.

8. *Item*. That nothing be payed by way of Drink money or otherwiſe, either to the Clerks, whether Principal or Under-Clerks, or to their Servants, or Dependers, either for calling Summons, or Acts, or for Copies of Suſpenſions, Interloqutors or Minuts, or giving in, or getting out of Papers, or getting up, or giving back Proceſſes, or for any other Cauſe, except what is above allowed, and is to be payed in to the Collector above mentioned.

9. *Item* That there be a Collector Nominate and Choſen by the Lords for Collecting, Ingathering and Keeping all the Dues and Payments above allowed, and that he have a yearly Sallarie of eighteen hundred *merks Scots*, to be payed out of the ſame Fond with the Clerks, and who ſhal bear a proportional deduction with them, in caſe of ſhort-coming, and have the ſaid ſhort-coming or inlake ſupplyed in the ſame manner with them *ut ſupra*; and that at his admiſſion, and in the beginning of every Seſſion he take the ſame Oath preſcribed to the Clerks *mutatis mutandis*; and that he find ſufficient Caution for the diſcharge of his Office; and that he mark and ſign the payments made as above appointed, upon everie Act, Decreet, or other Writ that are to paſs his hands: And that the ſaids Writs make no Faith unleſs by him marked as ſaid is. And to the effect the Clerks may have a ſufficient Check upon the Collector, That the Collector ſign their Minute-Books once everie week, at ſuch a time as he and they ſhall agree.

10. That

10. That for hereafter in admitting Clerks of the Seſſion, whether for the Inner or Outer-houſe, the Lords of Seſſion obſerve the following Rule, *viz.* That they admit no perſon to be a Clerk in the Inner-houſe, unleſs he be an Advocat or Writer to the Signet, and has ſerved as ſuch three years before. And next, that they take ſtrict Tryal of the Ability and Integrity of all Clerks they ſhall admit, for performing their reſpective Offices, and that every Clerk in the Inner-houſe, ſhall at his Admiſſion make Faith, and purge himſelf by his great Oath; that he hath not given, nor promiſed, directly or indirectly for procuring or obtaining his ſaid Office and Place, more than four thouſand *merks* or an years Sallary; and that the Clerks of the Outer-houſe make Faith, and purge themſelves in like manner, that they have not given nor promiſed, directly or indirectly, for procuring and obtaining their ſaid Office and Place, more than One thouſand pound *Scots*, or an years Sallary thereof.

11. *Item*, That to prevent all ſlackneſs in the Clerks, in diſcharge of their Offices, the Lords take courſe that the Liedges be by them diligently and faithfully ſerved, under ſuch Rules and Certifications as they ſhall think meet.

12. *Item*, That the Regiſters immediatly under the Clerk-Regiſters keeping in the lower Parliament-Houſe, or any where elſe, be patent to all the Liedges, without any payment or other acknowledgment of that ſort, to be made to any for ſight of the Minut-Books; and that for ſearching in the ſaids Regiſters, there be only payed a Rix Dollar to the Regiſters Servant; And that for the Extracts to be taken out of the ſame, there be payed as follows, *viz.* Of any Writ paſt and Regiſtrat ſince the year 1660, the double of the Extracts of Decreets given out by the Clerks of Seſſion, which makes ſix pounds *Scots* for each ſheet, and this ſix *pounds* to be both for Writing and Signing: And of any Writ regiſtrat before the year 1660, the triple, which makes nine pounds *Scots* for each Sheet writing and ſigning, *ut ſupra*. *Item*, That there be only payed to the Regiſter for any Petition given in to be preſented in Parliament, twenty merks *Scots*; and for the firſt Extracts of Acts and Decreets of Parliament, in favour of privat Perſons, one hundred merks *Scots*; and for the ſecond Extracts thereof, twenty merks money foreſaid, And that there be nothing more payed for the ſaid Petitions or Extracts under the name of Drink-money, or upon any other pretence, to any other perſon whatſoever. And that the Regiſter exact no more in time coming, for his Sign and Subſcription, nor a merk *Scots*, as was in uſe before the year 1686. And that if the Regiſter or his Servants tranſgreſs in the Premiſſes, the Regiſter ſhall be Tryed and Cenſured by the Lords of Seſſion, and his Servants ſhall be in like manner tryed by them, and ſhall be cenſurable by Fyning, Impriſonment, or otherways, as the Lords ſhall ſee cauſe.

13. That the Side-Bar, commonly ſo called in the Outer-houſe, be wholly taken away; that is to ſay, That no Lord of the Seſſion be for hereafter allowed to call any Cauſe there, except only that the Ordinary on the Bills, may go there to his wonted Place and Station, and call and hear Parties, in order to the paſſing or refuſing of Bills, according to the cuſtom before obſerved: And that it be furder declared, that if any of the ſaid Lords, ſhall go and call Cauſes at the Side-Bar, hereby diſcharged; neither the Parties, nor their Advocats, nor the Clerks ſhall be obliged to anſwer, or attend; nor ſhall there not anſwering, or not attending, be prejudicial to them in any ſort. *Item*, That to ſupply any good uſe, that the foreſaid Side Bar might have ſerved for; that for hereafter, the Lord Ordinary in the Outer-houſe, ſhall have and make uſe of his ſitting and time on the Bench, in the Outer-houſe, every *Saturnday* forenoon during the Seſſion, for calling ſuch Cauſes, as having been called by him, in order of the Rolls, on the preceeding days of that Week, and not put to any period, were formerly in uſe to have been called again by him at the Side-Bar; And for that end, that no Acts be called on the ſaid *Saturnday*, until the Lord

Ordinary go through the ſaids Cauſes, to be called again as ſaid is: And that the Ordinary take care on the preceeding days of the Week, the Clerks may have ſufficient time to call their Acts, if they find the ſaid Calling prejudged by the ſaid appointment of the *Saturnday*, in lieu of the Side-Bar.

14. That to ſhorten Proceſſes, Acts, and Decreets, the Lord Ordinary that hears the Cauſe, and is to report the ſame, take in the Minuts from the Clerks, after they are ſhowen to both Parties; and that if needful, he reform the ſame, and thereupon report the Cauſe, notwithſtanding of any thing in the contrary, contained in the late Act of Parliament anent Advocats their ſubſcribing of the Minuts of Debate, and that the Minuts ſo ſigned by the Ordinary, be patent to the Parties in the Clerks hands.

15. That Cauſes called in preſence, and appointed by a particular deliverance to be heard on a certain day, be peremtorly called that day, according to the Order, and Date of the ſaid Deliverance, and that a Roll of them be made for that end; and that the Cauſe ſo ordered, ſhall have the ſame right to be called at its day, as Cauſes inrolled in the Books of Inrolment, whoſe order the Lords cannot alter; and that no Cauſes be called by the Oordinary Roll that day, until the Cauſe thereto remitted be heard, and Diſcuſſed.

16. That all points, that the Lords upon Reports, or Bills, ſhall think fit to hear in preſence, be either immediatly called and debated, as to that Point, or otherways be inrolled in the Roll of Cauſes, in the Inner-houſe, according to the date of the Lords deliverance; and that for that end, the Parties Procurators who demand a Hearing, be always ready to debate, or that otherways the Lords may determine upon the former Debate.

17. The Acts and Decreets againſt more Debitors than one, may be Extracted in parts relating particularly to any of the Defenders, as if they did proceed upon a ſingle Lybel; and that Acts and Decreets upon competition of Rights, may be Extracted in parts, each Party extracting the Decreet of his preference to others, with the Grounds thereof, ſo as the Party poſtponed, needs not extract the Debate anent his being poſtponed; but only cauſe relate in general, that ſuch Rights are preferred to him, as *V. G.* If there be five Competitors, the Party preferred in the firſt place, needs extract no more, but the production of all their Intereſts, with the grounds of his preference to the other four, and he that is preferred in the ſecond place, needs not extract the Grounds, and Debate whereupon the firſt is preferred to him; but only after a ſimple Narrative, that the firſt was preferred, deduce the Grounds, and Debate, whereupon he is preferred to the laſt three, without inſerting the Grounds of Debate betwixt the three that are poſtponed to him: And ſo for the reſt of the Competitors, and that how ſoon any Competitor is preferred, he may extract his preference at his pleaſure, in the manner above-mentioned, albeit the Competition as to the reſt be not determined.

18. That in time coming, Decreets *in foro* be not reduced and laid open upon Nullities, furder then *ad hunc effectum*, to hear the Parties anent redreſſing his Prejudice by that Nullity; and that it be declared, that the reſt of the Interlocutors in the foreſaid Decreet do ſtand, *tanquam res hactenus judicata*.

19. That in all Concluded Cauſes, when the Lord appointed to prepare the ſame for Adviſing, doth Adviſe the ſaids Cauſes: the Advocats for the Parties, are either to object at the Preparing what they have to ſay againſt the Report to be made, or to make their ſaid Objections within at moſt fourteen days thereafter; which Objections with the Anſwers thereto, ſhall be be conſidered by the ſaid Ordinary, and ſhall be ſubjoyned to the Report. And in caſe this be neglected, the Party neglecting ſhall not be heard at the Adviſing, until he Conſign an Amand of five Dollars; and that no Objection be made at the Adviſing againſt the Act, but againſt the Report, as to the Points proven or not proven.

20. That

20. That there be no Decreet of Certification upon Summons of Reduction and Improbation, or of ſimple Improbation in abſence, unleſs the Cauſe be firſt called in the ordinary manner, before the Lord in the Outer-houſe; and that the ſaid Lord do then appoint it to be Inrolled, according to the Date of its Calling: and if when the ſaid Summons comes to be called in its Courſe, the ſaid Decreet of Certification ſhall ſtill happen to be given in abſence; then it ſhall remain unextracted for the ſpace of four Weeks at leaſt thereafter.

21. That in the caſe of other Decreets in abſence, after calling of the Summons by the Clerk in the Outer-houſe in the ordinary manner, the Cauſe be Inrolled in the beginning of the next Weeks Roll, and Inrolled accordingly; and at the next Calling in its courſe, either Decreet be given in abſence, or if the Defender Compear; that he be admitted to ſee and anſwer, and that the Cauſe be again Inrolled, and Proceeded in thereafter, in the ordinary manner.

22. That in all Cauſes where Probation is admitted, and made by Writ or Witneſſes; the Lord Ordinary for Concluded Cauſes, who prepares the ſame for Reporting, may conſider the ſaid Probation; and if he find it clear, that he mark it to be ſo: and that in that caſe, the Probation and Cauſe be Adviſed ſummarly, without order of the Roll.

23. That for the remeiding of the Abuſe of the multiplying of Bills, and of their ſuperfluous length, the Lords ſhall upon occaſion, as they find any Bill to be groundleſs, or in its length ſuperfluous and litigious, Fyne the Advocat, Subſcriber and Party, in ſuch a pecuniary Mulct to be inſtantly payed, as they ſhall judge reaſonable. And furder, that in all Cauſes where the Lords at the Concluſion thereof, ſhall find the Succumber to have been calumnious or litigious; they ſhall take in an Accompt from the Party prevailing, upon his Oath of the Expenſes, and Damnage that he hath been put to in that Proceſs, and that then they Decern: or in caſe of Extravagancy, Tax and Modifie the ſaid Expenſes and Damnage, to be payed by the Succumber to the Party prevailing as ſaid is; and this be more ſquarely and largely done in time coming, for the better preventing of calumnious and litigious Pleas and Proceſſes.

24. That in place of the Allowance, formerly in place of Adjudications, or Appryſings, there be only for hereafter, a ſhort Abbreviat made of the Decreet of Adjudication, after the manner of the ſaid Allowance, and that this Abbreviat be at the pronouncing of the ſaid Decreet, Signed by the Lord Pronouncer thereof, and given in to be Recorded within threeſcore days after the Pronouncing of the ſaid Decreet, conform to the Act of Parliament anent Recording of Appryſings, and that the Recorder for Recording thereof, take no more than fourty ſhilling *Scots*, whatever be the Sums of Money or Lands contained in the ſaid Decreet of Adjudication, or whatever may be the length thereof: and that the perſon In-giver of the ſaid Abbreviat, his name be marked, and he Sign to it, as is appointed at the Regiſter of Seaſins: and that the Recorder of the ſaid Abbreviat, do likewiſe mark immediatly after Recording thereof, whether the Decreet whereof it is the Abbreviat, be then Extracted or not; and in caſe the Recorder of the ſaid Abbreviats, ſhall not Record the ſame duely as ſaid is, but ſhall happen to take in any Abbreviat after the ſaid threeſcore days, that he be therefore upon Tryal, deprived by the Lords of Seſſion.

25. That for the cutting off of groundleſs and expenſive Pleas, and Proceſſes in time coming, the Lords of Seſſion ſuſtain no Reduction of any Decreet-Arbitral, that ſhall be Pronounced hereafter upon a ſubſcribed Submiſſion, at the Inſtance of either of the Parties Submitters, upon any Cauſe or Reaſon whatſoever, unleſs that of Corruption, Bribery or Falſhood, to be alledged againſt the Judges-Arbitrators who pronounced the ſame.

26. That in all Actions of Sale of Bankrupts Lands upon the late Acts of Parliament, either depending, or to be hereafter raiſed; the Ranking of

the Creditors, and others concerned, ſhall proceed, and firſt be Concluded by Decreet, at leaſt to the Avail of the price of the Lands found, and Statute by the Lords of Seſſion, before the ſaid Lands be expoſed to Roup and Sale.

27. That in the Caſe, where a Matter brought before the Council, is by them Remitted to the Seſſion, to be there ſummarly Diſcuſſed: the ſame ſhall not be brought in before the ſaids Lords of Seſſion, to be Debated and Diſcuſſed in the Forenoon, to the hinderance of the ordinary Courſe of the Roll, and to the prejudice of the Liedges therein concerned: but ſhall only if the Lords think fit, be brought in to be Debated and Diſcuſſed as ſaid is, in ſuch an Afternoon as they ſhall appoint.

28. That to evite the Confuſion and Abuſes that oft-times happens in Actions againſt Debitors, where a multitude of Debitors are called; for hereafter in any Action to be intented before the Lords of Seſſion againſt Debitors, there be not above ſix Defenders called in the ſame Summons.

29. That notwithſtanding of the Regulation formerly made of Advocats Fees in the Act of Parliament 1672; yet to the effect, the ſaid Regulation may be better obſerved in time coming that the ſaids Fees be Regulat according to the Quality of the Perſons who ſhall employ them in manner following: *viz.* That for one Conſultation as is therein defin'd, a Nobleman ſhall not give more to an Advocat than nine Dollars, or two Guineys at the moſt. That a Baron or Knight, ſhall not give more than ſeven Dollars, or one Guiney and a half at moſt. That any other Gentleman or chief Burgeſs, ſhall not give more than four Dollars, or one Guiney at moſt. And that all the reſt of the Liedges or any other perſon, ſhall not give more than three Dollars at moſt. And furder, that there ſhall not be above three Advocats called to the Conſulting the Drawing of the Information, after Diſpute to the Lords: and that to the Advocat that Draws the ſame, (of theſe three) may be given a full Fee, according to the foreſaid Regulation: and to the other two, the half thereof, and no more.

30. That in all Proceſſes before the Seſſion, it ſhall be lawful to any of the Parties, in any ſtep of the Proceſs, to Object againſt the other: that he either by himſelf, or ſome other for him, hath given or promiſed to one or other of his Advocats, or to ſome other perſon, directly or indirectly for the Advocats behove, more than is allowed by the foreſaid Regulation. And in this caſe if the Party confeſs, or be holden as Confeſt, then he ſhall be immediatly Fyned by the Sentence of the Lords, in One thouſand pounds *Scots*, whereof One thouſand Merks to be payed to the Party objecter, and five hundred Merks to the Poors Box. And that Letters on a ſimple Charge of ſix days, and other Executorials neceſſary, be direct for payment thereof. And furder, if the Party diſcovered to be guilty as ſaid is, ſhall happen to be the Purſuer, then the Proceſs ſhal ſtop, until the foreſaid Fyne be payed as ſaid is, without prejudice of the foreſaid Execution for the ſame. And in caſe the Advocat alledged to have received more than the ſaid Regulation, ſhal not after the Givers confeſſing, or being holden as confeſt, purge himſelf by his Oath in the Terms above ſet down, that he has received no more, then he ſhall be Fyned in the quadruple of the Fee, allowed to him by the Regulation, and tranſgreſſed as ſaid is, to be payed into the Poors Box. And furder, the ſaid Advocat tranſgreſſing, not purging himſelf as ſaid is, ſhall be debarred from the Exerciſe of his Imployment for the ſpace of three Months of Seſſion time, without compting the time of Vacation.

31. That the whole Articles of Regulation, contained in the Act of Parliament 1672, be declared to be in full force, except in ſo far, as they are hereby Innovated or Altered.

Given at the Court at Kenſington, *the 29th day of* April 1695. *And of His Majeſties Reign the 7th Year.*

By His MAJESTIES *Command.*

J. JOHNSTOUN.

WILLIAM R.

RIght Truſtie and right wellBeloved Conſin and Counſellor, Right truſtie and entirelie Beloved Couſin and Counſellor, Right truſtie and right wel Beloved Couſins and Counſellors, Right truſtie and well Beloved Couſins and Counſellors, Right truſtie and well Beloved Counſellors, Truſtie and well Beloved Counſellors, and truſtie and well Beloved, We greet you well. Whereas We have Approven and Signed the Regulations, Agreed on by you, and Tranſmitted to Us, concerning the Seſſion, Advocats and Clerks, and that We have Ordered them to be Printed; We do heartilie Approve of your Zeal and Diligence in the ſaid Matter, with which We are the better Satisfied that you have been Unanimous in your Reſolutions. We Require you to go on, as ſoon as convenientlie you can to Enquire further into anie Abuſes commited in anie other Judicatories or Offices of Truſt according to the Tenor of the Act of Parliament. And having Reſolved upon ſuch Regulations as you ſhal find neceſſarie for Remedieing the ſame, to Tranſmit them to Us that We may Signifie Our Pleaſure thereanent. In the mean while, We Aſſure you of Our Countenance, and of all due Encouragment to Finiſh what you have Begun, ſince We are deſirous of nothing more than that Juſtice ſhould be Adminiſtrated, and all Offices Executed in a manner, as fair, and as little Burthenſome to our People as is poſſible: So We bid you heartilie Farewel. Given at Our Court at *Kenſingtoun*, the 29th day of *April*, 1995. And of Our Reign the 7th Year.

By His Majeſties Command,

J. Johnſtoun.